

119 FERC ¶ 61,070
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Consolidated Edison Co. of New York, Inc.	Docket Nos. EL02-23-008
v.	EL02-23-009
Public Service Electric and Gas Co.,	EL02-23-010
PJM Interconnection, L.L.C., and	EL02-23-011
New York Independent System Operator, Inc.	EL02-23-012

ORDER ACCEPTING INFORMATIONAL REPORTS

(Issued April 20, 2007)

1. This order addresses three sets of informational reports on the performance of the operating protocol (Protocol) used by two regional transmission organizations (RTOs), the New York Independent System Operator, Inc. (NYISO) and PJM Interconnection, L.L.C. (PJM), to fulfill long-standing contractual obligations of Public Service Electric and Gas Company (PSE&G) to wheel power for Consolidated Edison Company of New York, Inc. (ConEd) through New Jersey into New York City. As discussed below, we accept the reports and reject ConEd's requests for further action.

Background

2. A companion order¹ issued today describes the background of and cites to earlier orders in this proceeding. Briefly, the case began when ConEd filed a complaint against PSE&G, NYISO and PJM for continual and unwarranted curtailment of the 1,000 MW wheeling service that ConEd had contracted to receive from PSE&G under two contracts, a 1975 400 MW contract and a 1978 600 MW contract. The contracts involve several interties between ConEd's and PSE&G's systems: the J and K lines, which connect

¹ *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co., PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.*, 119 FERC ¶ 61,071 (2007) (Phase II Rehearing Order).

ConEd's Ramapo substation in Rockland County, New York and PSE&G's Waldwick substation in New Jersey; the A line, which connects PSE&G's Linden switching station in New Jersey and ConEd's Goethals Station on Staten Island; and the B and C lines, which connect PSE&G's Fossil Hudson Generating Station in Jersey City and ConEd's Farragut Switching Station in Brooklyn. Flows over each of these lines are partially controllable by Phase Angle Regulators (PARs).

3. In the course of these proceedings, and with rulings from the Commission on contested issues,² the four parties drafted the Protocol to govern each party's obligations and responsibility in performing contractual wheeling. When the Commission accepted the Protocol, it also directed the parties to report on whether the Protocol is working as intended, adjustments that seem necessary, and their observations on the extent to which actual operation under the Protocol complies with the contracts and Opinion No. 476.³ The Commission established report dates of September 30, 2005 and December 31, 2005.⁴ At the parties' requests, the Commission added a third report due January 19, 2007.⁵

Informational Reports and Responses

4. First reports were filed, on September 30, 2005, in Docket No. EL02-23-008, by NYISO, PJM and PSE&G, jointly, and by ConEd. On October 17, 2005, notice was

² See *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co., PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.*, 101 FERC ¶ 61,282 (2002) (Phase I Opinion), *order on reh'g*, 105 FERC ¶ 61,343 (2003) (Phase I Rehearing Order); *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co., PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.*, Opinion No. 476, 108 FERC ¶ 61,120 (2004) (Opinion No. 476), *order on reh'g and clarification* (Phase II Rehearing Order), note 1, *supra*.

³ *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co., PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.*, 111 FERC ¶ 61,228 (2005) (Protocol Order).

⁴ *Id.* at P 34.

⁵ See *Consolidated Edison Co. of New York, Inc. v. Public Service Electric and Gas Co., PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.*, 115 FERC ¶ 61,082 (2006). The original date for filing the third report was May 2006. At the parties' requests, the reporting period was extended to December 31, 2006 and the third report made due January 19, 2007. See Notices of May 15, September 25, and October 31, 2006.

issued of the filing of these first informational reports.⁶ On October 27, 2005, NYISO, PJM and PSE&G jointly filed a limited protest to the ConEd first report.

5. Second reports were filed on December 30, 2005, in Docket No. EL02-23-009 by PSE&G, in Docket No. EL02-23-010 by NYISO and PJM, jointly, and in Docket No. EL02-23-011 by ConEd. On January 11, and on January 13, 2006, notice was issued of the filing of these second informational reports.⁷ On January 30, 2006, ConEd filed a protest to PSE&G's second report and NYISO-PJM's second report and the three other parties jointly filed a protest to ConEd's second Report. On February 23, 2006, ConEd filed an answer to the combined protest to ConEd's second report.

6. On January 19, 2007, in Docket No. EL02-23-012, NYISO, PJM and PSE&G jointly filed their third report covering Protocol operations in 2006. In the same docket, ConEd filed its third report. On January 24, 2007, notice was issued of the filing of these third informational reports.⁸ On February 9, 2007, NYISO and PJM jointly filed a protest to ConEd's third report, and PSE&G filed a protest to the ConEd's third report.

First Informational Reports

Combined First Report of NYISO, PJM and PSE&G

7. NYISO, PJM and PSE&G's first report covered the first three months for which the Protocol was implemented, July through September 2005. NYISO, PJM and PSE&G note that the Protocol parties met between April 2005 and July 2005 to develop (1) more detailed operator procedures, (2) operator tools to help implement the Protocol, and (3) procedures and tools for ConEd to analyze scheduling under the Protocol. In addition, they report that the parties assembled and shared a significant amount of performance data, including day-ahead and real-time data, to aid in the analysis and improvement of the implementation of the Protocol. Further, they report that the RTOs developed a daily set of performance metrics based on desired flow, nodal prices and actual flows under the Protocol.

8. NYISO, PJM and PSE&G provide their general observations based on feedback by the parties over the first three months of the Protocol's implementation. First, they note that PJM has requested redirection of flows onto NYISO (with no cost to ConEd) approximately 25 percent of the time when no congestion was occurring in the New York City area, while NYISO rarely requested the redirection of flows onto PJM due to little or

⁶ 70 Fed. Reg. 61,268 (2005).

⁷ 71 Fed. Reg. 3072 (2006); 71 Fed. Reg. 3508 (2006). The deadline for filing comments on the second reports was extended to January 30, 2006.

⁸ 72 Fed. Reg. 4498 (2007).

no congestion on the New York City side of the PARs. Second, they notice that the monitoring of actual flow compared to desired flow on the A, B and C lines needs to be improved. Third, they state that the RTOs were not adjusting the desired flow when operating circumstances required the actual flows to deviate from the desired flow.

9. Finally, NYISO, PJM and PSE&G state that the four parties have been discussing differences and that they expect differences to diminish as the RTOs gain experience in implementation and through improved training. The RTOs recognize that improvements need to be made, and they expect to continue to improve performance over the next 90 days.

ConEd's First Report

10. ConEd states that the first three months of implementation demonstrate that the Commission's expectations had not been realized and that the Protocol, as of the end of the first reporting period, did not comport with the two contracts. ConEd retained CRA International (CRA) to review the economic aspects of the Protocol and attached the CRA review to its report.

11. Based on the CRA review, ConEd says that there are numerous deficiencies in the level of transmission service. First, ConEd states that PJM and NYISO failed to maintain power flows to ConEd over the A, B and C lines at their scheduled levels. ConEd is particularly concerned about the pattern of under-deliveries during all-time peak periods in July and August 2005. Second, ConEd states that actual flows frequently deviated from the 100 MW bandwidth, and thus, the bandwidth limitation have not been used effectively to assure that the actual contractual flows remain reasonably close to the desired scheduled flow. Third, ConEd states that the RTOs redirected flows to New York inappropriately and failed to redirect flows to PJM. ConEd contends that the non-application and misapplication of the redirection provision of the Protocol substantially reduced the service to which it is entitled.

12. ConEd contends that the under-deliveries and inappropriate directions of flow had both reliability and cost consequences. System reliability concerns were raised due to (1) the increase in loading on the Dunwoodie interface and (2) the necessity to dispatch more generation in New York City. Although it would not be possible to precisely calculate the cost consequences, the CRA review estimates the increased costs for ConEd to be between \$25 and \$35 million.

13. Despite the problems, ConEd states that it continues to hope that PJM and NYISO will "get it right" and that the Protocol will be a workable procedure for implementing the two contracts. ConEd recommends that the Protocol be continued, subject to further review in the December reports and subject to certain interim actions. ConEd's first interim action is to have the RTOs change the administration of the Protocol by promptly completing written procedures and software modifications, and by providing employee training. Second, ConEd requests that the RTOs respond to informational requests.

Third, ConEd requests that the Commission confirm that the redirections of flows are not authorized where they would increase costs to the receiving RTO. Finally, ConEd requests that redirections of flow be limited to 150 MW until such time as the RTOs certify that the refined procedures have been adopted.

Limited Protest of NYISO, PJM and PSE&G to ConEd's First Report

14. In their limited protest, NYISO, PJM and PSE&G state that ConEd exaggerate the implementation problems by basing its analysis on hindsight rather than the information that was actually available to PJM and NYISO in real time. In addition, NYISO, PJM and PSE&G state that ConEd's report failed to mention that ConEd's equipment problems played a role in the implementation problems. For example, they note that ConEd insisted that the RTOs limit the number of tap moves at the A PAR to a maximum of ten per day, rather than the 20 per day allowed under the Protocol.

15. NYISO, PJM and PSE&G note that they have already taken several of the interim actions that ConEd requested. For example, they have responded to ConEd's requests for information. In addition, they contemplate that written procedures, software modifications and employee training will be completed by December 2005. With respect to ConEd's request for a Commission order on the redirection of flows, NYISO, PJM and PSE&G state that the RTOs have agreed not to redirect flows when, based on the best information available to the RTO operators, redirecting the flows would increase the costs of the RTO that would be required to transmit the directed flows. Further, they state that ConEd's request to temporarily restrict redirections of flow under the Protocol should be rejected because changes to the Protocol can only be made through a FPA section 205 or 206 filing,⁹ not in an informational compliance report. Accordingly, they contend that there is no need for the Commission to require any of the interim actions.

Second Informational Reports

NYISO-PJM's Second Report

16. In their December 30, 2005 report, NYISO and PJM state that during the second three months of operations, the parties continue to share a significant amount of performance data to aid in the analysis and improvement of the implementation of the Protocol. They have shared with all parties a daily set of performance metrics based on desired flow, nodal prices, and actual flow under the Protocol. They also state that over the next several weeks, there would be additional system enhancements, including (1) the sharing of additional real-time PJM and NYISO locational marginal pricing congestion data via data links, (2) software improvements to improve the process of managing the

⁹ 16 U.S.C. § 824d (2000).

redirection of flows, (3) improved procedures for operators, which include more specificity in steps for maintaining or changing flows, and (4) software updates to allow ConEd to set its default day-ahead election for PJM.

17. As with the first report, the RTOs provide general observations on the implementation of the Protocol for the last quarter of 2005. For example, they note that PJM requested the redirection of flows onto NYISO (at no cost impact to ConEd) approximately 42 percent of the time when no congestion was occurring in the New York City area, while NYISO only requested the redirection of flows onto PJM during two hours during October and November. They further note that the monitoring of actual flows compared to desired flows on the A, B and C lines has improved considerably, enabling NYISO and PJM to maintain flows within the Protocol's 100 MW bandwidths. The RTOs also state that they have been discussing with ConEd whether there should be a balancing credit paid to ConEd when ConEd requests deliveries a day ahead, but actual real-time interface flows are reduced. In addition, NYISO and PJM recognize that there are circumstances where it does not make sense to strictly comply with the Protocol. They state that while the parties discuss whether changes to the Protocol should be proposed, they will keep a log of any deviations. Finally, NYISO and PJM observe that PSE&G and ConEd have concerns about the effect of under-funding Financial Transmission Rights (FTRs) in PJM due to PJM's system maintenance outages and higher than expected loop flow levels.

PSE&G's Second Report

18. PSE&G filed a separate report for the second three months of operations under the Protocol. Although PSE&G note that it agreed with most of the NYISO-PJM report, it is filing separately to address three issues. First, PSE&G states that in addition to the concerns about under-funding, it also has concerns about the level of congestion costs in the Day-Ahead Market associated with the flows under the two contracts. PSE&G states that it was willing to accept the LMP differential measurement of its cost responsibility for redispatch under the 600 MW contract as an administrative accommodation when the Protocol was negotiated because it did not anticipate such high levels of congestion costs or such high levels of FTR under-funding. PSE&G attributes the levels of congestion costs to ConEd's economically inefficient nominations under the 400 MW contract; ConEd nominates the whole 400 MW for all days for almost all hours, even though ConEd receives no apparent benefits from such deliveries. Therefore, PSE&G suggests that consideration should be given to (1) modifying the FTR funding mechanism and/or the methodology for measuring redispatch costs, and (2) whether ConEd's nomination procedures under the 400 MW contract provide proper economic incentives.

19. The second issue raised by PSE&G involves balancing payments. PSE&G states that a payment of a balancing credit to ConEd would not be appropriate. PSE&G also states that there has not been an adequate demonstration of any shortfalls in deliveries.

Further, PSE&G states that before balancing payments should be considered, adjustments to other measurement parameters should be analyzed.

20. PSE&G also says that ConEd has unilaterally imposed restriction over the number of tap moves that can be taken over the A line PAR due to operational concerns associated with the equipment. Although PSE&G cannot quantify the extent to which the restriction may have affected deliveries, it believes that the restriction may have accounted for at least some of the under-deliveries alleged by ConEd.

ConEd's Second Report

21. In its second report, which covers the first five months of the Protocol's implementation (July through November 2005), ConEd reiterates and updates the issues raised in its first report based on a new review by CRA. Further, ConEd recommends that additional interim actions be taken. First, ConEd requests that PJM be required to conform its congestion charges and scheduling practices for the 400 MW contract to Opinion No. 476. Second, ConEd requests that a crediting mechanism be adopted for certain congestion charges. Third, ConEd requests that the RTOs properly implement the Protocol with respect to redirections of flow from NYISO to PJM. Fourth, ConEd recommends that the Commission require a true-up mechanism for costs incurred by ConEd associated with the A, B and C interface flows. Finally, ConEd requests that the Commission determine the amount of refunds necessary to make ConEd whole for the economic consequences of violations of the Protocol and of Opinion No. 476.¹⁰

22. ConEd states that despite its experience to date, the Protocol should be continued, with the implementation of its recommended interim actions and subject to an additional report in 90 days. However, ConEd also requests that the Commission initiate a process by which ConEd may be financially compensated for the consequences of the parties not abiding by the Protocol and Opinion No. 476.¹¹ ConEd states that the cumulative cost of non-compliance with the Protocol between July and November 2005 is \$57 million.

¹⁰ As an example, ConEd states that PJM had not created in its open access transmission tariff (OATT) a separate category for service under the 400 MW contract; rather, PJM treated service under the 400 MW contract as indistinguishable from all other non-firm service.

¹¹ Citing, *e.g.*, *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange*, 93 FERC ¶ 61,121 at 61,381 (2000); *DTE Energy Trading, Inc. v. Midwest Independent Transmission Operator, Inc.* 111 FERC ¶ 61,062 at P 28 (2005); *H.Q. Energy Services (U.S.), Inc. v. New York ISO*, 113 FERC ¶ 61,184 at P 36 (2005); *Consumers Power Co.*, 68 FERC ¶ 61,077 at P. 61,379 (1994).

Joint Protest to ConEd's Second Report

23. NYISO, PJM and PSE&G filed a protest to ConEd's second report. They contend that the Commission should not adopt any of the action items proposed by ConEd. NYISO, PJM and PSE&G state that the Protocol provisions, unlike other tariff provisions, were understood to be a first attempt at solving an extremely complex problem, namely, implementing two unusual wheeling agreements for the 1970s in an era with radically different characteristics. They state that the RTOs complied with the Protocol in good faith, to the best of their ability, and improved over time. They also state that the Protocol is the sole mechanism for implementing Opinion No. 476 and that section 1.5 of the Protocol's Appendix 1 provides for periodic review of the Protocol to determine if modifications are required.¹² In addition, NYISO, PJM and PSE&G contend that the Protocol is a "work in progress" and that implementation issues should be addressed by prospective changes in the Protocol.

24. The joint protest argues that refunds are not appropriate. First, NYISO, PJM and PSE&G argue that due process requires that refunds result from a complaint or a FPA section 206 filing, not an informational report. Second, they note that refunds are prohibited by the RTOs tariffs, which specify that the RTOs are not liable for any consequential, indirect, punitive, special or incidental damages. Third, they contend that if refunds were required, there would need to be a hearing to determine the correct amount of refunds, a process that would be costly and litigious. In addition, they state that even if refunds were permitted, given the complexity and novelty of the Protocol, the Commission should use its discretion and waive the refunds.

25. NYISO, PJM and PSE&G recommend that the Commission provide the parties additional time to negotiate any necessary improvements to the Protocol. In addition, the RTOs recommend that the parties file another status report in 90 days to address on-going performance issues and include specific proposal for any necessary improvements.

ConEd's Protest of Second Report

26. ConEd answers the issues raised in the second reports filed by PSE&G and NYISO-PJM. It contests the RTOs' statement that redirections were implemented "at no cost impact to ConEd." ConEd states that not only do the RTOs not substantiate this claim, its data contradicts the claim. In addition, ConEd addresses PSE&G's statement that PSE&G did not anticipate such a high level of congestion costs or under-funding of

¹² Section 1.5 of the Protocol Appendix 1 states:

Because the procedures in this Operating Protocol are new, the parties will review all aspects of the Operating Protocol on a periodic basis, initially monthly and, after a six-month period, annual, to determine if modifications are required to effectuate the Commission's Opinion in Docket No. EL02-23-000 (Phase II).

FTRs when it was negotiating the Protocol. ConEd asserts that PSE&G's congestion costs pales in comparison to ConEd's. In addition, ConEd notes that when negotiating the Protocol, PSE&G knew that FTRs were not fully funded. Further, ConEd notes that as a transmission owner, PSE&G is responsible for unscheduled maintenance outages and can minimize them and their effects on FTR funding levels through scheduled maintenance premised on good utility practice.

27. ConEd also addresses PSE&G's claim that ConEd's nominations under the 400 MW contract are economically inefficient. It states that PSE&G's effort to cast ConEd as the "scapegoat for congestion" on the PJM system has no legal, policy, or factual basis. ConEd also states that as a matter of law, it is entitled to service on demand and that the service may be "firmed-up" by paying the incremental cost of redispatch.

28. In response to PSE&G's opposition to a balancing credit, ConEd states that such a credit would "correct an anomaly" under the Protocol, especially since under-deliveries have occurred and continue to occur. In response to statements that ConEd restricted the number of tap moves on the A line, ConEd notes that the A-line PAR has reached its life expectancy and is failing. Although ConEd recommended that the number of tap changes be limited, the RTOs had the discretion to accept or reject the recommendation. In addition, ConEd notes that the A-line PAR will be replaced after the 2007 summer season.

29. ConEd also renews its request that the Commission initiate procedures to reimburse ConEd and its New York City customers for costs that were imposed on it by the unlawful delivery deficiencies and redirections under the Protocol. ConEd states that delivery deficiencies and redirections violate the Protocol and ConEd's contractual rights.

30. ConEd states that the ongoing efforts to improve the implementation of the Protocol might be beneficial prospectively, but would not remedy the deviations that have already occurred. Finally, ConEd renews its request that the Commission require that another report be filed.

Third Informational Reports

PSE&G, NYISO and PJM's Joint Third Report

31. In their January 19, 2007 report, PSE&G, NYISO, and PJM claim improvements in Protocol operations for the calendar year 2006. They note that the percentage of time that deliveries are within the allowable bandwidth has increased significantly. They note that the parties use the Desired Flow Offset (DFO) mechanism, which is set forth in the Protocol and addresses situations when normal Protocol operations are not sufficient to maintain desired flow within the 100 MW bandwidth. They also state that they have revised the process they use to effectuate the Protocol's redirect dispatch procedures, including software improvements by NYISO. In addition, they explain that the reason

for more redirects from PJM to NYISO than from NYISO to PJM is that congestion has generally been more frequent in northern New Jersey than it has been in New York City.

32. NYISO, PJM and PSE&G state that they have developed a Four-Party Joint Issue List (Workplan) that identifies all outstanding issues, their status, the parties responsible for addressing the issues, and the expected completion date for each issue.¹³ They confirm that a four-party working group will meet to address the Workplan over the first half of 2007, and that the Protocol parties will meet again in May and June 2007 to identify any remaining open issues. Finally, NYISO, PJM and PSE&G state that there is no need for the Commission to act now to ensure continued successful operations under the Protocol.

ConEd's Third Report

33. ConEd's third report covers the first 18 months of operation under the Protocol and is supported by a third review by CRA. ConEd reiterates that since operations began under the Protocol, there have been numerous departures from Protocol requirements that cause adverse operational and economic effects for ConEd, effects that the Protocol was intended to prevent. Specifically, ConEd states that non-compliance with the Protocol between July 2005 and December 2006 has cost it \$111 million. ConEd identifies the non-compliance issues as (1) shortfalls in redeliveries, (2) redirections of flows from PJM into a congested NYISO and foregone redirections by NYISO that would have relieved congestion on lines into New York City, (3) inadequate explanation of the data used to determine redirections, and (4) the RTOs' recent, excessive use of DFOs.

34. ConEd claims that because the Protocol is part of NYISO's and PJM tariffs,¹⁴ non-compliance is a violation of the tariffs and of Commission orders. ConEd claims that it is entitled to restitution for these violations. Therefore, ConEd asks the Commission to initiate hearing and settlement procedures, commencing September 10, 2007, to consider these refund claims and any unresolved matters stemming from the Workplan. ConEd states that if it and the other parties are able to resolve Protocol performance and refund issues before September, they will move to cancel the settlement procedures, withdraw all rehearing requests, and close this docket.

35. Notwithstanding its claims of non-compliance, ConEd notes that the parties, particularly PJM, have significantly improved Protocol implementation and that actual transmission services are closer to the requirements of Order No. 476 and the two

¹³ See Attachment B to ConEd Third Report; and Attachment A to Joint Third Report.

¹⁴ Attachment M-1 to NYISO's Market Administration and Control Area Services Tariff, FERC Electric Tariff; Original Volume No. 2; Rate Schedule No. 41 to PJM's FERC Electric Tariff, Sixth Revised Volume No. 1.

contracts. Because the parties have agreed upon the Workplan of tasks to be completed in the first half of 2007, and because of the improvement of Protocol operations in 2006, ConEd recommends continuation of the Protocol. ConEd states that continued progress reports to the Commission are no longer necessary.

NYISO-PJM's Protest to ConEd's Third Report

36. In their joint protest, NYISO and PJM agree with ConEd's suggestion that, if the parties have not reached voluntary resolution of the issues by September, the Commission initiate dispute resolution procedures, such as assignment of a settlement judge. However, they recommend that the Commission not initiate formal hearing or settlement procedures at this time because ConEd is not asking the Commission to act before September. NYISO and PJM consider ConEd's claims for recompense to be claims for damages, not refunds, and argue that the Commission is without authority to award damages.

37. NYISO and PJM reiterate their position that they have performed their obligations under the Protocol, a novel and challenging mechanism, in good faith and to the best of their abilities. They answer ConEd's charges of inappropriate or missed redirections by pointing out that they were working with forecasts of expected conditions while ConEd has the benefit of hindsight. The RTOs again state that ConEd has exaggerated the under-redeliveries of power and that ConEd equipment on the A line was out of service during the last quarter of 2006. They acknowledge that DFOs are a new mechanism that they are gaining experience in implementing, and point out that the Protocol does not require that all parties be consulted before DFOs are initiated.

38. NYISO states that it has worked diligently to address ConEd's concerns, and that it has cooperated with ConEd's requests for data and analysis. It states its full commitment to fulfilling its responsibilities under the Protocol and its intent, going forward, to alleviate ConEd's concerns.

PSE&G Protest to ConEd's Third Report

39. In its protest, PSE&G answers similarly to the RTOs concerning the effect of the 100 MW bandwidth on redeliveries, and the use of DFOs. PSE&G recommends increasing the width of the current 100 MW bandwidth if changes in PAR settings cannot resolve the problems. PSE&G also challenges ConEd's claim of under-deliveries by stating that, over certain periods, ConEd received larger quantities of power in New York City than it delivered to PSE&G in New Jersey. PSE&G disputes ConEd's claim for \$111 million in recompense as grossly overstated because of unjustified assumptions used in the calculation. For example, PSE&G states that ConEd inflated under-deliveries by ignoring over-deliveries. Finally, PSE&G states that ConEd may have received better performance than it would have been entitled to, if the RTOs strictly complied by the terms of the Protocol.

Discussion

Procedural Issues

40. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to protest unless otherwise ordered by the decisional authority. We are not persuaded to accept ConEd's February 23, 2006 answer to the protest filed by NYISO, PJM and PSE&G.

Acceptance of Reports

41. We accept the three sets of informational reports. Since the parties have agreed that additional reports are not necessary, we will not require them.

Workplan and Changes to the Protocol

42. The parties have adopted a Workplan under which they will continue to work to resolve outstanding issues. We remind the parties that any changes to the OATTs must be filed with the Commission under section 205 or 206 of the Federal Power Act. Further, we remind the parties that section 1.4 of the Protocol states that all aspects of the Protocol are subject to the dispute resolution procedures of the PJM and NYISO OATTs. While working on the Workplan, the parties may wish to use these procedures.

Whether to Institute Hearing and Settlement Procedures

43. We reject ConEd's request that we institute hearing and settlement procedures, to commence in September, to address ConEd's claims for \$111 million in refunds. The request is too speculative. ConEd itself states that it and the remaining Protocol parties may reach accommodation before September 10, 2007. We therefore decline to act on a hypothetical matter that may not even be presented to us. Moreover, ConEd's request is procedurally infirm. The reports are compliance filings that respond to the Commission's directive in the Protocol Order. A compliance filing is limited to complying with the Commission's directives. ConEd's request that we initiate hearing and settlement procedures to determine refunds is tantamount to a complaint. It is beyond the scope of the compliance ordered by the Commission in the Protocol Order and is therefore rejected.¹⁵

¹⁵ See, e.g., *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 60 & n.25 (2005) (requests for changes to market-based rates rejected as outside scope of compliance filing).

ConEd's Requested Interim Actions

44. In its first and second reports, ConEd requested that interim actions be taken by the Commission in conjunction with approval of the reports. Specifically, ConEd requests that: (1) the RTOs make changes to the administration of the Protocol by promptly completing written procedures and software modifications and by providing necessary employee training, (2) the RTOs respond to informational requests, (3) the Commission issue an order confirming that the redirections of flows are not authorized where the redirection would increase costs on the receiving RTO, (4) redirections of flow be limited to 150 MW until such time as the RTOs certify that the refined procedures have been adopted, (5) PJM be required to conform its congestion charge and scheduling practices for the 400 MW contract to Opinion No. 476, (6) a crediting mechanism be adopted for certain congestion charges, (7) the RTOs properly implement the Protocol with respect to redirections of flow from NYISO to PJM, (8) the Commission implement a true-up mechanism for costs incurred by ConEd associated with the A, B, and C interface flows, and (9) the Commission determine the amount of refunds necessary to make ConEd whole for the economic consequences of violations of the Protocol and of Opinion No. 476.

45. With respect to ConEd's requests that the RTOs make changes to the administration of the Protocol by completing written procedures and software modifications, by providing employee training and by responding to informational requests, we note that in their limited protest to ConEd's first report, NYISO, PJM and PSE&G states that the RTOs are already developing written procedures, software modifications and employee training. They also state that the RTOs have either responded to ConEd's requests for information or committed to respond to ConEd. Also, in their second report, NYISO and PJM state that NYISO software was expected to be implemented in January 2006. Given these uncontested statements and the fact that ConEd recognizes that significant improvements have been made in these areas, the Commission finds that no further action is required on these two items and therefore denies ConEd's request for interim action.

46. ConEd requests that the Commission confirm that redirections of flows are not authorized where the redirection would increase costs on the receiving RTO. In addition, ConEd requests that the Commission require a true-up mechanism for costs incurred by ConEd associated with the A, B, and C interface flows. ConEd also requests that redirections of flow be limited to 150 MW until the RTOs certify that the refined procedures have been adopted. Finally, ConEd requests that a crediting mechanism be adopted for certain congestion charges.

47. The Commission denies these four requests for interim action on procedural grounds. First, we find these requests to be an impermissible attempt to revise tariff sheets through a compliance filing. Second, in order for us to act, we would need to

institute a section 206 proceeding. The Commission has consistently rejected efforts to treat various filings, including compliance filings, as section 206 complaints.¹⁶

48. ConEd also requests that PJM be required to conform its congestion charge and scheduling practices for the 400 MW contract to Opinion No. 476 and that the RTOs properly implement the Protocol with respect to redirections of flow from NYISO to PJM. These two issues, although presented as compliance issues, are really complaints about the implementation of the Protocol. As noted above, complaints cannot be raised in a compliance filing, but must be filed under FPA section 206. Indeed, we have specifically denied the Protocol parties' requests that similar changes be treated as compliance filings, explaining that proposed revisions would be changes to a rate already on file with the Commission and for that reason would need to be filed under section 206.¹⁷ Accordingly, we deny ConEd's requests for interim action on these two items.

49. Finally, ConEd requests in its second report that the Commission determine the amount of refunds necessary to make ConEd whole for the economic consequences of violations of the Protocol and of Opinion No. 476. In its third report, ConEd requests that the Commission set this same issue for hearing. As noted above, we deny ConEd's request to set the issue for hearing. In addition, we deny ConEd's more generic request to establish other types of procedures to determine the claimed economic consequences of the violations of the Protocol.

The Commission orders:

- A. The informational reports filed in these proceedings are hereby accepted.
- B. ConEd's request that the Commission institute hearing and settlement procedures is hereby rejected, as discussed in the body of the order.
- C. ConEd's requests for interim actions are hereby rejected, as more fully discussed in the body of the order.

¹⁶ See *Consolidated Edison Co. of New York, Inc.*, 97 FERC ¶ 61,241 at 62,092 (2001), citing *Louisiana Power & Light Company*, 50 FERC ¶ 61,040 at 61,062 (1990).

¹⁷ See *Consolidated Edison Co. of New York v. Public Service Electric and Gas Co., PJM Interconnection, L.L.C., and New York Independent System Operator, Inc.*, 111 FERC ¶ 61,228 at P 35 (2005).

D. The proceedings in these dockets are terminated.

By the Commission.

(S E A L)

Philis J. Posey,
Deputy Secretary.